

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

DONNA HOLT,

Plaintiff,

v.

BILL SCHMUTZ, et al.,

Defendants.

No. 2:18-cv-04096-NKL

ORDER

On August 20, 2018, defendant Stacie Frank moved to dismiss for failure to state a claim Count I of the complaint by plaintiff Donna Holt. Doc. 21. Nurse Frank argued that Ms. Holt failed to plead facts suggesting that Nurse Frank was involved in or responsible for the conduct alleged in Count I. *Id.* Ms. Holt did not respond to that motion. Instead, on September 4, 2018, she moved for leave to file a first amended complaint to clarify her claims and to add additional defendants. Doc. 25. The amended complaint does not assert Count I as against Nurse Frank. Nurse Frank did not respond to Ms. Holt's motion to file the amended complaint.

Federal Rule of Civil Procedure 15 permits a party to amend a pleading as a matter of course within 21 days of the filing of a responsive pleading or a motion pursuant to Rule 12(b). Fed. R. Civ. P. 15(a)(1). Because Plaintiff moved to file the amended complaint 15 days after Defendant Frank filed her motion to dismiss, Plaintiff was entitled to file the amended complaint as a matter of course. *See Pure Country v. Sigma Chi Fraternity*, 312 F.3d 952, 956 (8th Cir. 2002) (holding that "seeking leave to amend does not, by itself, invoke the district court's discretionary authority to deny leave if the amendment would otherwise fall within the purview of the first sentence of Rule 15(a)").

The first amended complaint supersedes and takes the place of the original complaint. *See, e.g., In re Atlas Van Lines, Inc.*, 209 F.3d 1064, 1067 (8th Cir. 2000) (“It is well-established that an amended complaint supercedes an original complaint and renders the original complaint without legal effect.”). Because Nurse Frank’s motion to dismiss was directed to the original complaint, it is moot. *See Avery v. Boyd Bros. Transp.*, No. 13-00579-CV-BP, 2013 U.S. Dist. LEXIS 190748, at **1-2 (W.D. Mo. Aug. 21, 2013) (noting that plaintiff who filed amended complaint fewer than 21 days after motion to dismiss was filed “was entitled to amend [the] Complaint as a matter of course” and denying motion to dismiss original complaint as moot because amended complaint “superseded and displaced [the] original complaint”).

Accordingly, the Court GRANTS Plaintiff’s motion for leave to file the first amended complaint and ORDERS that Plaintiff file the first amended complaint within five days, and the Court DENIES as moot Nurse Frank’s motion to dismiss.

/s/ Nanette K. Laughrey
NANETTE K. LAUGHREY
United States District Judge

Dated: October 4, 2018
Jefferson City, Missouri